

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BRIAN MARTINEZ	§	
v.	§	CIVIL ACTION NO. 5:15cv47
SGT. SULIVEN, ET AL.	§	

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Brian Martinez, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Martinez named the New Boston Police Department as one of the Defendants in his lawsuit. The Magistrate Judge issued a Report recommending that the police department be dismissed because the department has no separate legal existence apart from the city and thus cannot be sued in its own name. Darby v. Pasadena Police Department, 939 F.2d 311, 313 (5th Cir. 1991).

A copy of this Report was sent to Martinez at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243

(1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Initial Report and Recommendation of the Magistrate Judge (docket no. 8) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the claim against the New Boston Police Department is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted. 28 U.S.C. §1915A. The New Boston Police Department is DISMISSED as a party to this lawsuit. The dismissal of this claim shall have no effect upon the remaining claims or defendants in the lawsuit.

SIGNED this 21st day of January, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE